

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2693
OFFERED BY MR. GEORGE MILLER OF
CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Popcorn Workers Lung
3 Disease Prevention Act”.

4 SEC. 2. FINDINGS.

5 Congress finds the following:

6 (1) An emergency exists concerning worker ex-
7 posure to diacetyl, a substance used in many
8 flavorings, including artificial butter flavorings.

9 (2) There is compelling evidence that diacetyl
10 presents a grave danger and significant risk of life-
11 threatening illness to exposed employees. Workers
12 exposed to diacetyl have developed, among other con-
13 ditions, a debilitating lung disease known as
14 bronchiolitis obliterans.

15 (3) From 2000 to 2002, the National Institute
16 for Occupational Safety and Health (NIOSH) identi-
17 fied cases of bronchiolitis obliterans in workers em-

1 employed in microwave popcorn plants, and linked
2 these illnesses to exposure to diacetyl used in butter
3 flavoring. In December 2003, NIOSH issued an
4 alert "Preventing Lung Disease in Workers Who
5 Use or Make Flavorings," recommending that em-
6 ployers implement measures to minimize worker ex-
7 posure to diacetyl.

8 (4) In August 2004 the Flavor and Extract
9 Manufacturers Association of the United States
10 issued a report, "Respiratory Health and Safety in
11 the Flavor Manufacturing Workplace," warning
12 about potential serious respiratory illness in workers
13 exposed to flavorings and recommending comprehen-
14 sive control measures for diacetyl and other "high
15 priority" substances used in flavoring manufac-
16 turing.

17 (5) From 2004–2007 additional cases of
18 bronchiolitis obliterans were identified among work-
19 ers in the flavoring manufacturing industry by the
20 California Department of Health Services and Divi-
21 sion of Occupational Safety and Health (Cal/
22 OSHA), which through enforcement actions and an
23 intervention program called for the flavoring manu-
24 facturing industry in California to reduce exposure
25 to diacetyl.

1 (6) In a report issued in April 2007, NIOSH
2 reported that flavor manufacturers and flavored-food
3 producers are widely distributed in the United
4 States and that bronchiolitis obliterans had been
5 identified among microwave popcorn and flavoring-
6 manufacturing workers in a number of States.

7 (7) Despite NIOSH's findings of the hazards of
8 diacetyl and recommendations that exposures be
9 controlled, and a formal petition by labor organiza-
10 tions and leading scientists for issuance of an emer-
11 gency temporary standard, the Occupational Safety
12 and Health Administration (OSHA) has not acted to
13 promulgate an occupational safety and health stand-
14 ard to protect workers from harmful exposure to di-
15 acetyl.

16 (8) An OSHA standard is urgently needed to
17 protect workers exposed to diacetyl from
18 bronchiolitis obliterans and other debilitating condi-
19 tions.

20 **SEC. 3. ISSUANCE OF STANDARD ON DIACETYL.**

21 (a) INTERIM STANDARD.—

22 (1) RULEMAKING.—Notwithstanding any other
23 provision of law, not later than 90 days after the
24 date of enactment of this Act, the Secretary of
25 Labor shall promulgate an interim final standard

1 regulating worker exposure to diacetyl. The interim
2 final standard shall apply—

3 (A) to all locations in the flavoring manu-
4 facturing industry that manufacture, use, han-
5 dle, or process diacetyl; and

6 (B) to all microwave popcorn production
7 and packaging establishments that use diacetyl-
8 containing flavors in the manufacture of micro-
9 wave popcorn.

10 (2) REQUIREMENTS.—The interim final stand-
11 ard required under subsection (a) shall provide no
12 less protection than the recommendations contained
13 in the NIOSH Alert “Preventing Lung Disease in
14 Workers Who Use or Make Flavorings” (NIOSH
15 Publication 2004–110) and include the following:

16 (A) Requirements for engineering, work
17 practice controls, and respiratory protection to
18 minimize exposure to diacetyl. Such engineering
19 and work practice controls include closed proc-
20 esses, isolation, local exhaust ventilation, proper
21 pouring techniques, and safe cleaning proce-
22 dures.

23 (B) Requirements for a written exposure
24 control plan that will indicate specific measures
25 the employer will take to minimize employee ex-

1 posure; and requirements for evaluation of the
2 exposure control plan to determine the effective-
3 ness of control measures at least on a biannual
4 basis and whenever medical surveillance indi-
5 cates abnormal pulmonary function in employ-
6 ees exposed to diacetyl, or whenever necessary
7 to reflect new or modified processes.

8 (C) Requirements for airborne exposure
9 assessments to determine levels of exposure and
10 ensure adequacy of controls.

11 (D) Requirements for medical surveillance
12 for workers and referral for prompt medical
13 evaluation.

14 (E) Requirements for protective equipment
15 and clothing for workers exposed to diacetyl.

16 (F) Requirements to provide written safety
17 and health information and training to employ-
18 ees, including hazard communication informa-
19 tion, labeling, and training.

20 (3) EFFECTIVE DATE OF INTERIM STAND-
21 ARD.—The interim final standard shall take effect
22 upon issuance. The interim final standard shall have
23 the legal effect of an occupational safety and health
24 standard, and shall apply until a final standard be-

1 comes effective under section 6 of the Occupational
2 Safety and Health Act (29 U.S.C. 655).

3 (b) FINAL STANDARD.—Not later than 2 years after
4 the date of enactment of this Act, the Secretary of Labor
5 shall, pursuant to section 6 of the Occupational Safety and
6 Health Act (29 U.S.C. 655), promulgate a final standard
7 regulating worker exposure to diacetyl, if at such time,
8 diacetyl is still being processed or utilized in facilities sub-
9 ject to such Act. The final standard shall contain, at a
10 minimum, the worker protection provisions in the interim
11 final standard, a short term exposure limit, and a permis-
12 sible exposure limit that does not exceed the lowest fea-
13 sible level, and shall apply at a minimum to all facilities
14 where diacetyl is processed or used.

15 **SEC. 4. STUDY AND RECOMMENDED EXPOSURE LIMITS ON**
16 **OTHER FLAVORINGS.**

17 (a) STUDY.—The National Institute for Occupational
18 Safety and Health shall conduct a study on food flavorings
19 that may be used as substitutes for diacetyl and shall
20 transmit a report of the findings of the study to the Occu-
21 pational Safety and Health Administration.

22 (b) CONSTRUCTION.—Nothing in this section shall be
23 construed as affecting the timing of the rulemaking out-
24 lined in section 2.